IN THE HIGH COURT OF UTTARTANCHAL AT NAINITAL.

Criminal Misc. Application No. 44/2004

Ram Niwas Singh Rana ---Applicant.

Vs.

State of Uttaranchal and another ---Respondents.

Smt. Pushpa Joshi learned counsel for applicant.
Learned A.G.A. for respondents.

Hon'ble M.M.Ghildiyal, J.

This application under section 482 of Code of Criminal Procedure has been filed by the applicant challenging the order dated 1.10.2003 passed by Special Judicial Magistrate Didihaat, district Pithoragarh in criminal case no. 960/2003 and order dated 5.1.2004 passed by the Sessions Judge Pithoragarh in criminal revision no. 16/2003. The order dated 1.10.2003 has been challenged on the ground that while passing this order the Special Judicial Magistrate without summoning the accused has directly issued warrant and further passed order for suspension of the petitioner from service. This order was passed without jurisdiction. I find force In the submission of learned counsel for the applicant. The Special Judicial Magistrate ought not have passed order for suspension of petitioner and further without issuing summon he should not have issued warrant against the applicant. It is not disputed that prior to issuing warrant any summons were issued. Further the Special Judicial Magistrate has no jurisdiction to pass the suspension order. The revisional court too has ignored this fact and directed the accused to be present in the court of Special Judicial Magistrate.

In the aforesaid circumstances the order dated 1.10.2003 passed by Special Judicial Magistrate as well as the order dated 5.1.2004 passed by the Sessions Judge are quashed. The Special Judicial Magistrate Didihaat, District Pithoragarh is directed to pass a fresh order for summoning the accused. With these directions the application is allowed.

(M.M.Ghildiyal, J.)

Dated: 16-02-2004

ISB